UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 9

DURA-LINE CORPORATION,
A SUBSIDIARY OF MEXICHEM

Respondent,

and

UNITED STEEL PAPER AND FORESTRY, RUBBER, MANUFACTURING, ENERGY, ALLIED INDUSTRIAL AND SERVICE WORKERS INTERNATIONAL UNION, AFL-CIO-CLC LOCAL 14300-12

Charging Party.

Cases 09-CA-163289
09-CA-164263
09-CA-165972
09-CA-166481
09-CA-167265

RESPONDENT'S ANSWERING BRIEF TO THE COUNSEL OF THE GENERAL COUNSEL'S LIMITED EXCEPTIONS TO THE ADMINISTRATIVE LAW JUDGE'S DECISION

Dated: August 28, 2018

Grant D. Petersen, Esq.
Ogletree Deakins, Nash. Smoak & Stewart, P.C.
100 N. Tampa Street
Suite 3600
Tampa, FL 33602
Telephone: (813) 289-1247
Facsimile: (813) 289-6530
grant.petersen@ogletree.com

Robert N. Chiaravalloti, Esq.
Ogletree, Deakins, Nash, Smoak & Stewart, P.C.
10 Madison Avenue
Suite 400
Morristown, NJ 07960
Telephone: (972) 656-1600
Facsimile: (973) 656-1611
robert.chiaravalloti@ogletree.com

Attorneys for Respondent

I. INTRODUCTION

Pursuant to Section 102.46 of the Rules and Regulations of the National Labor Relations Board ("Board"), 29 C.F.R. §102.46, Counsel for the General Counsel ("General Counsel" or "GC"), on August 4, 2017, filed limited exceptions (GC's Exceptions") and a supporting brief ("GC's Brief") to the June 20, 2017 Decision and Order ("Decision") of Administrative Law Judge Melissa M. Olivero ("ALJ").[1] Respondent Dura-Line Corporation, a subsidiary of Mexichem ("Respondent" or "the Company") now files its answering brief to the GC's Exceptions. For the reasons discussed below, Respondent respectfully requests that the Board deny or otherwise rule on the GC's Exceptions as discussed below and affirm the portions of the ALJ's Decision that are subject to the GC's Exceptions.

II. STATEMENT OF THE CASE

This case arises from the Company's business decision in 2014 to close its Middlesboro, Kentucky plant and transfer the work to its existing facilities in Ohio and Georgia, and to a new facility in Clinton, Tennessee. The United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Services Workers International Union, AFL-CIO-CLC Local 14300-12 (the "Union"), which represented the production, maintenance, shipping/receiving, and trucking employees at the Middlesboro plant; filed several unfair labor practices charges ("ULPs") regarding the Company's business decision.

The General Counsel consolidated all of the ULP's in the amended second consolidated complaint ("Complaint"). The Complaint alleged that the Company violated Sections 8(a)(1),

---

[1] References to the ALJ's Decision are identified by the letters "ALJD" followed by page number, e.g., "ALJD, p.__." References to the hearing transcript are identified as "Tr." followed by the page number, e.g. "Tr., p. __). References to exhibits introduced by the General Counsel are by the letters "GC Ex." followed by exhibit number, e.g., "GC Ex. ___". References to exhibits introduced by the Respondent are by the letters "R. Ex." followed by exhibit number, e.g., "R. Ex. ___."

8(a)(3), 8(a)(4), and 8(a)(5) of the National Labor Relations Act (the "Act") by making threats to employees; requiring employees to sign confidentiality agreements; closing the Middlesboro plant because of union animus; transferring the Middlesboro plant work to other facilities; laying off bargaining unit employees; destroying the property of an employee; reducing the 2015 Thanksgiving bonus; and refusing to bargain over the decision to close, relocate work and equipment; and layoff the Middlesboro employees. The case was tried before ALJ Olivero from June 27 through July 1, 2016.

On June 20, 2017, the ALJ issued the Decision and found that Respondent did not violate Section 8(a)(5) by refusing to bargain over the Middlesboro plant closure, the layoff of affected employees and the transfer of work and equipment (ALJD pp. 34 – 36). Specifically, the ALJ found that the Union clearly and unmistakably waived its right to bargain pursuant to the Management Rights Clause in the parties' collective bargaining agreement ("CBA")(ALJD p. 36).

However, the ALJ found that Respondent violated Sections 8(a)(1), 8(a)(3), and/or 8(a)(4) by threatening employees, requiring employees to sign confidentiality agreements in connection with the plant closing, and destroying the personal property of Chumley (ALJD pp.30 -33, 39 – 46). The ALJ also found that Respondent violated Section 8(a)(5) by failing to bargain over the reduction of the 2015 Thanksgiving bonus (ALJD pp.36 – 37).

In connection with the above violations, the ALJ ordered the following affirmative action and/or remedies: (1) restore the production work that was transferred from the Middlesboro plant, (2) make the affected employees whole for any loss of earnings and other benefits suffered as a result of the Middlesboro plant closing, less interim earnings, plus interest, (3) compensate all affected employees for any adverse tax consequences of receiving a lump-sum backpay award, (4) reimburse affected employees for search-for –work and interim work-related

expenses, and (5) pay affected employees the difference between the amount of the 2015 Thanksgiving bonus and the amount paid in prior years (ALJD pp.47 – 52).

III. THE GENERAL COUNSEL'S EXCEPTIONS

The General Counsel has asserted the following seven exceptions to the Decision:

1. The ALJ failed to find that Respondent violated the Act by refusing to bargain over the Middlesboro closure, layoffs, and transfer of work and equipment.
2. The ALJ erred in finding that Respondent was relieved of its duty to bargain over the decision to transfer the work of the Middlesboro facility to three other facilities.
3. The ALJ erred that the Union waived its right to bargain over the closure, and attendant layoffs and work transfer, and the resulting dismissal of this allegation in the Complaint.
4. The ALJ failed to award consequential damages for consequential economic harm that any employee listed in Appendix B of the Decision incurred as a result of Respondent's unfair labor practices as requested in the Complaint.
5. The ALJ failed to issue an order that sets forth that Respondent cease and desist from destroying the personal property of employees because they gave testimony to the Board and cooperated in a Board investigation.
6. The ALJ failed to issue an order requiring Respondent to take the affirmative action of reimbursing Freddie Chumley for his grill, coffeemaker, tools and other personal effects as noted in the Remedy portion of the decision.
7. The ALJ erred in ordering a meeting or meetings during working hours at the Middlesboro facility for the purpose of reading the Notice to Employees at Respondent's Middlesboro facility (GC's Exceptions, pp. 1 – 2).

IV. ARGUMENT

A. The ALJ Did Not Make Any Findings Regarding Whether Respondent Complied With *Dubuque Packing Company* When It Decided to Close the Middlesboro Plant and Transfer the Work and Equipment and, Therefore, the General Counsel's First Exception Should be Denied.

The General Counsel's first exception asserts that the ALJ's finding that Respondent's refusal to bargain over the Middlesboro plant closure, layoffs and transfer of equipment and work did not violate the Act was in error because Respondent had a duty to bargain under *Dubuque Packing Co.*, 303 NLRB 386 (1991)("*Dubuque*"). However, the ALJ never reached the substantive issue of whether Respondent's actions complied with test set forth in *Dubuque* and, therefore, made no finding in the Decision regarding this substantive issue, because the ALJ correctly found that the Union had waived its right to bargain over these matters pursuant to the Management Rights Clause in the CBA (ALJD p. 35 – 36). Thus, the General Counsel's first exception fails to address a specific finding in the Decision and should be denied on this basis alone.

In any event, assuming *arguendo* that the *Dubuque* test[2] is relevant here, the General Counsel's contention in GC's Brief that the Decision supports the finding that labor costs were a factor in Respondent's decision to relocate the Middlesboro facility is patently incorrect. Specifically, the General Counsel argues that the ALJ found that Respondent would not have closed the Middlesboro facility absent the employee's protected activity, the Middlesboro facility

[2] Under the test set forth in *Dubuque*, the General Counsel has the initial burden of showing that the decision was "unaccompanied by a basic change in the nature of the employer's operation." *Id.* at. 391. The employer then has the burden of rebutting the General Counsel's prima facie case by establishing that: (1) the work performed at the new location varies significantly from the work performed at the former plant; (2) the work performed at the former plant is to be discontinued entirely and not moved to the new location; or (3) the employer's decision involves a change in the scope and direction of the enterprise. *Id.* at 391-393. In the alternative, the employer may show that either: (1) the labor costs (direct and/or indirect) were not a factor in the decision or (2) even if the labor costs were a factor, the employer may show that the union could not have offered labor cost concessions sufficient to change the employer's decision. *Id.*

was Respondent' most profitable and productive facility, and Respondent embedded references to the unionized status of its workforce and its impending collective-bargaining negotiations (GC Exceptions Brief p. 2). Contrary to these generalized statements, which have no supporting evidence regarding actual labor costs, the undisputed evidence demonstrated that labor costs were not a factor in the decision to close the Middlesboro plant and relocate the work and equipment.

The compelling evidence demonstrated that the labor costs at the new expanded Clinton facility were projected by the Company to be higher than the labor costs at the Middlesboro plant and, therefore, the Company's decision to relocate the Middlesboro facility was not and could not have been motivated by the desire to reduce labor costs (Tr. 312). Specifically, Respondent's Exhibit 4, page A-1-7 shows that the annual wages for the "base case," i.e. Middlesboro, was $5,368,718. Respondent's Exhibit 4, page A-1-7 shows that the wages for the "expanded case" i.e. production at the new Clinton plant, would be $6,257,146.

Significantly, these wage figures did not break out the wages associated with union employees versus non-union employees at the Middlesboro and Clinton facilities and, therefore, the Company would not have been able to determine whether there would have been any union-related labor costs savings by closing the Middlesboro facility and transferring the work and equipment to the Clinton facility (R.Ex. 4; Tr. 374, 391 – 392, 516).

Similarly, Respondent's financial analysis regarding the transfer of work from the Middlesboro plant to Ohio and Georgia facilities did not break out the labor costs associated with union employees versus non-union employees at the Middlesboro and Ohio and Georgia facilities (R. Ex. 6, pages 18 – 22). Therefore, the Company would not have been able to determine whether there were any union-related labor cost savings by closing the Middlesboro facility and transferring the work and equipment to the Ohio and Georgia facilities

Further, the General Counsel's assertion that Respondent did not meet its burden under the *Dubuque* test because "Respondent failed to present any evidence which showed that the Union could not have offered labor cost concessions sufficient to change Respondent's decision" is equally incorrect. The undisputed evidence demonstrated that the Middlesboro facility had the following twenty limitations that were solved by closing the plant and transferring the work and equipment to the Clinton, Ohio and Georgia facilities: (1) low productivity, as extrusion lines were "limited to 600 lb/hr due to short length of the building"; (2) pelletizer 400 lb/hr; (3) limited space and material flow for FuturePath production; (4) limited space for CIC production; (5) outdated power distribution system; (6) high conversion cost; (7) poor layout; (8) antiquated resin handling system; (9) insufficient process water system; (10) inefficient finished product flow; (11) low roof line such that there is no room for blending capacity; (12) prone to flash flooding; (13) no rail spur into the plant; (14) no interstate highway near the plant; (15) equipment vintage; (16) multiple maintenance issues; (17) no automation; (18) no blending, (19) the roof in Middlesboro was too low to accommodate gravimetric blenders, and (20) the collective bargaining agreement ("CBA") prevented running all lines 24/7 (R. Ex. 3. Slides eight though 10; Tr. 236, 285, 291, 293, 295 – 296, 297).

Further, the Company sought to increase production capabilities by increasing the length of the production lines, locate closer to customers and establish a stand-alone research and development center close to its Knoxville, Tennessee headquarters (Tr. 287, 293, 304, 314) . Clearly, only one of the twenty Middlesboro plant limitations (i.e., the CBA limitation on running all lines 24.7) could have been the subject of collective bargaining and bargaining with the Union would not have solved the remaining nineteen limitations or accomplish the Company's goals of increasing production, locating production closer to customers, and establishing a stand-alone R&D center close to its headquarters (Tr. 297, 300).

Moreover, the undisputed evidence demonstrated that Respondent projected that it would achieve an average of $9.6 million in additional profit per year over a ten year period if it closed the Middlesboro plant and transferred the work and equipment to the Clinton, Ohio and Georgia facilities (R. Ex. 4 & 6; Tr. 310, 366). Given that the annual wages and benefits for the entire Middlesboro workforce (including union and non-union employees) totaled $5,368,718 per year, it would have been mathematically impossible for the Union to propose and/or bargain sufficient concessions to overcome the overwhelming financial benefits resulting from closing the Middlesboro plant and transferring the work and equipment to the Clinton, Ohio and Georgia facilities.

B. The General Counsel's Second and Third Exceptions to the ALJ's Well-Reasoned Finding that the Union Waived Its Right to Bargain Over the Closure, Layoff, and Transfer of Work and Equipment Should be Denied Because the General Counsel's Argument Fails to Address Relevant Board and Court Case Law

As even a cursory review of the Decision reveals, the ALJ's determination that the Management Rights Clause in the parties' CBA constituted a clear and unmistakable waiver of the Union's right to bargain over the closure of the Middlesboro plant, layoff of employees, and transfer of work and equipment is amply supported by the record evidence and relevant Board and Court case law. Specifically, the ALJ closely examined the language of the Management Rights Clause and thoroughly reviewed the relevant Board and Court cases addressing the issue of when and whether a management rights clause can operate as a clear and unmistakable waiver of a union's right to bargain under Section 8(a)(5) in connection with a plant closure and transfer of work and equipment.

On the other hand, the GC's Brief completely fails to address any of the relevant case law regarding clear and unmistakable waivers and, instead, attempts to bootstrap the ALJ's finding of union animus under Section 8(a)(3) into a refusal to bargain violation under Section 8(a)(5). The

General Counsel's failure to squarely address the waiver issue is not surprising. As noted in the ALJ's Decision[3], both the General Counsel and the Union completely failed to address the waiver issue in their post-hearing briefs to the ALJ, thereby effectively conceding the issue in favor of Respondent.

Essentially, the General Counsel argues that, because the ALJ found that Respondent violated Sections 8(a)(1) and (3) by closing the Middlesboro plant and transferring the work and equipment to nonunion facilities, the Board should somehow transform these 8(a)(1) and (3) violations into a Section 8(a)(5) violation. To support this assertion, the General Counsel cites to a ***concurring opinion*** by then Member Browning in *Miami Systems Corp*., 320 NLRB 71, 72 (1995) for the proposition that a union cannot waive its right to bargain over a decision that is grounded in allegedly unlawful, antiunion motivation (GC's Exceptions Brief, page 4). Interestingly, Member Browning cited several cases to support his view, including *Continental Winding Co*., 305 NLRB 122 (1991) and *Parma Industries*, 292 NLRB 90 (1988), none of which addressed the issue of whether the language of a management rights clause could serve as a waiver of the union's right to bargain. 320 NLRB at 72, fn 2. Consequently, in adopting the Administrative Law Judge's finding that the employer had violated Section 8(a)(5) by eliminating the third shift because the management rights clause did not serve as a waiver, the Board majority dismissed Member Browning's unique view and specifically noted that "we find it unnecessary to pass on our concurring colleague's additional grounds for finding" a violation of Section 8(a)(5). 320 NLRB at 72.[4]

[3] See footnote 31 of the Decision.

[4] Moreover, the Sixth Circuit Court of Appeals reversed the Board's ruling in *Miami Systems Corp* that the employer violated Section 8(a)(5), holding that the management rights clause did serve as a clear and unmistakable waiver, even though the Court also affirmed the ruling that the employer violated Section 8(a)(1) by threatening adverse action for attempts at unionization and remanded the issue of whether the employer violated Section 8(a)(3).

Similar to Member Browning's concurring opinion in *Miami Systems Corp.*, the General Counsel in the GC Brief also cites the factually distinguishable *Continental Winding Co. and Parma Industries* cases for the proposition that the ALJ's finding of union animus under Section 8(a)(3) should somehow be transformed into a refusal to bargain violation under Section 8(a)(5) despite the fact that neither case addressed the specific management rights clause waiver issue involved in the instant case.

In stark contrast to the General Counsel's legally unsupported argument, the ALJ reviewed the language of the Management Rights Clause in the parties' CBA in the context of the relevant Board and Court case law and correctly determined that such language operated as a clear and unmistakable waiver of the Union's right to bargain over the Company's decision to close the Middlesboro plant, layoff employees, and transfer the work and equipment. Specifically, the ALJ noted that the Management Rights Clause expressly provided the Company with the "sole and exclusive right" "to determine and from time to time redetermine the number, location and types of its plants and operations; the right to close, lease, or sell such plants or operations" and concluded that such language operated as a waiver of the union's right to bargain over the Company's decision to close the Middlesboro plant, layoff employees, and transfer the work and equipment under *Provena St. Joseph Medical Center*, 350 NLRB 808, 811 (2007), *United Technologies Corp.*, 287 NLRB 198 (1987), enfd.. 884 F.2d 1569 (2nd Cir. 1989); *American Stores Packing Co.*, 277 NLRB 1656, 1658 (1986); and *Chemical Solvents, Inc.*, 362 NLRB No. 164, slip op. at 7 (2015).

Based on the foregoing, the General Counsel's second and third legally unsupported exceptions should be denied and the ALJ's finding that Respondent did not violate Section

---

Uforma/Shelby Business Forms, Inc., d/b/a/ Miami Systems Corporation and CC Direct v. National Labor Relations Board, 111 D.3d 1284 (6th Cir. 1997).

8(a)(5) because the Union waived its right to bargain over the Company's decision to close the Middlesboro plant, layoff employees, and transfer the work and equipment pursuant to the Management Rights Clause should be affirmed.

C. The General Counsel's Fourth Exception Asserting that the ALJ Erroneously Failed to Award Consequential Damages Should Be Denied Because the ALJ has Awarded All Legally Supported Consequential Damages and the Additional Consequential Damages Sought by the General Counsel have No Support in Relevant Case Law or in the Record.

General Counsel's assertion that the ALJ failed to award consequential damages is flatly incorrect. The ALJ Decision requires Respondent to compensate the affected employees for any adverse tax consequences or receiving a lump-sum backpay award and reimburse affected employees for search-for-work and interim work-related expenses (ALJD p. 51). In fact, both the ALJ in the Decision and the General Counsel in the GC Brief cite several cases that clearly authorize the award of such consequential damages.

However, in addition to these legally supported consequential damages, the General Counsel has asserted that the ALJ should have awarded (1) any costs associated with obtaining a new house or car, (2) penalties charged to insureds under the Affordable Care Act, (3) the costs of any medical costs incurred due to loss of medical insurance coverage, (4) the cost of restoring the old policy or purchasing a new policy providing comparable coverage, and (5) costs involved in losing security clearance, certification, or professional license (GC Exceptions Brief, p. 8 and fn. 3). However, the General Counsel fails to cite to any evidence in the record that any of the affected employees suffered such costs and fails to cite any authority authorizing the award of these types of consequential damages.[5]

[5] While the General Counsel cites *Roman Iron Works*, 292 NLRB 1292 (1989), this decision involved a backpay specification in which the evidence supported actual out-of-pocket medical expenses. The record in the instant case contains no such evidence.

Section 10(c) of the Act "charges the Board with the task of devising remedies to effectuate the policies of the Act." *NLRB v. Seven-UpBottling Co.,* 344 U.S. 344 (1953). The Board has broad discretionary power in adopting remedies, subject to limited judicial review. *Fibreboard Paper Prods. Corp. v. NLRB,* 379 U.S. 203 (1964). An order of the Board will be disturbed only if "it can be shown that the order is a patent attempt to achieve ends other than those which can fairly be said to effectuate the policies of the Act." *Virginia Elec. & Power Co. v. NLRB,* 319 U.S. 533, 540 (1943).

The Supreme Court has made clear, however, that the Board's remedial discretion is not unlimited. The Board's "authority to order affirmative action does not . . . confer a punitive jurisdiction enabling the Board to inflict . . . any penalty it may choose . . . even though the Board is of the opinion that the policies of the Act may be effectuated by such an order." *Consolidated Edison v. NLRB*, 305 U.S. 197 (1938); *see also Carpenters Local 60 v. NLRB,* 365 U.S. 651 (1961). The remedies ordered must bear an appropriate relationship to the policies underlying the Act. *NLRB v. Seven-Up Bottling Co.*, 344 U.S. 348 (1953). The Board may not justify an order solely on the ground that it will deter future violations of the Act. *Bell & Howell Co. v. NLRB*, 598 F.2d 136, 147 n.36 (D.C. Cir.), *cert. denied*, 442 U.S. 942 (1979). Available remedies include only those necessary to make the discharged employee whole.

As there is no supporting case law and no record evidence demonstrating a need to award the consequential damages sought by General Counsel at this stage of the proceedings, the General Counsel's exception should be denied.

D. <u>The General Counsel's Fifth and Sixth Exceptions Should be Denied Because the Decision Already Contains the Orders Requested in these Exceptions.</u>

Section 1(k) of page 50 of the Decision provides that Respondent shall cease and desist "[D]estroying the personal property of employees." Further, the Remedy section on Page 47 of the Decision specifically provides: "Moreover, having found that Respondent unlawfully destroyed the personal property of Freddie Chumley, I shall order it to reimburse him for his grill, coffeemaker, tools, and other personal effects."

Despite the plain language of the Decision, General Counsel 's fifth and sixth exceptions assert that "The ALJ failed to issue an order that sets forth that Respondent cease and desist from destroying the personal property of employees because they gave testimony to the Board and cooperated in a Board investigation" and that "The ALJ failed to issue an order requiring Respondent to take the affirmative action of reimbursing Freddie Chumley for his grill, coffeemaker, tools and other personal effects as noted in the Remedy portion of the decision." Because the Decision already provides the remedies sought by the General Counsel's fifth and sixth exceptions, such exceptions should be denied.

E. To the Extent that the General Counsel is Conceding that the ALJ's Order Requiring Respondent to Restore the Production Work That was Transferred from the Middlesboro Plant to the Facilities in Georgia, Ohio, and Tennessee is Inappropriate and Unduly Burdensome, Respondent Agrees that the General Counsel's Seventh Exception is Appropriate if and only if the Board Affirms the ALJ's Finding that Respondent Violated Section 8(a)(1) & (3) by Closing the Middlesboro Plant and Transferring the Work and Equipment

Paragraph 2(a) on page 50 of the ALJ's Order requires Respondent to restore the production work that was transferred from the Middlesboro plant to Georgia, Ohio, and Tennessee as one of the remedies in connection with the ALJ's finding that Respondent Violated Section 8(a)(1) & (3) by closing the Middlesboro Plant and transferring the work and equipment. Paragraph 2(k) on page 52 of the ALJ's Order requires Respondent to thereafter hold a meeting or meetings during working hours at the Middlesboro facility to read the Notice to Employees, which is attached to the Decision as Appendix A.

On the other hand, the General Counsel's seventh exception requests the Board to reject paragraph 2(k) of the ALJ's order and, instead, require Respondent to secure a place in Middlesboro, Kentucky for a meeting or meetings in which the Notice to Employees will be read because "the Middlesboro facility was sold and therefore no longer exists for use by Respondent." The only plausible reading of the General Counsel's exception is that it constitutes an implicit if not explicit concession that it would be inappropriate and unduly burdensome for Respondent to restore the production work that was transferred from the Middlesboro plant to Georgia, Ohio, and Tennessee and, thus, an alternative location must be secured for the reading of the Notice to Employees.

While Respondent firmly asserts that the ALJ's finding that the closing of the Middlesboro plant and transfer of work and equipment violated the Act was erroneous and has persuasively argued this point in its Exceptions filed on August 4, 2017, in the unlikely event that the Board affirms the ALJ's finding that the plant closure and transfer of work and equipment violated Sections 8(a)1) and (3) of the Act, Respondent agrees that the ALJ's order requiring Respondent to restore the production work that was transferred from the Middlesboro plant to Georgia, Ohio, and Tennessee must be rejected as inappropriate and unduly burdensome and Respondent should be required to secure an alternate location in Middlesboro, Kentucky to read the Notice to Employees.

CONCLUSION

For all of the foregoing reasons, the Board should deny Exceptions 1 through 6 of the General Counsel's exceptions and rule on Exception 7 as set forth above.

Respectfully submitted,

OGLETREE, DEAKINS, NASH, SMOAK & STEWART, P.C.

By: s/ *Grant D. Petersen*

Grant D. Petersen, Esq.
Ogletree Deakins
100 N. Tampa Street
Suite 3600
Tampa, FL 33602
Telephone: (813) 289-1247
Facsimile: (813) 289-6530
grant.petersen@ogletree.com

Robert N. Chiaravalloti, Esq.
Ogletree Deakins
10 Madison Avenue
Suite 400
Morristown, NJ 07960
Telephone: (972) 656-1600
Facsimile: (973) 656-1611
robert.chiaravalloti@ogletree.com

Attorneys for Respondent

CERTIFICATE OF SERVICE

The undersigned certifies that on August 28, 2017, a copy of the foregoing *Respondent's Answering Brief to General Counsel's Limited Cross Exceptions to the Administrative Law Judge's Decision was served on all parties* via electronic mail to the addresses listed below

Linda B. Finch, Esq.
Counsel for the General Counsel
Region 9 National Labor Relations Board
3003 John Weld Peck Federal Building
550 Main Street
Cincinnati, OH 45202=3271
E-mail: linda.finch@nlrb.gov

Matthew P. Lynch, Esq.
Counsel for the Charging Party
Priddy, Cutler, Naake & Meaole
800 Republic Building
429 W. Muhammad Ali Boulevard
Louisville, KY 40202
E-mail: lynch@penmlaw.com

s/ *Grant D. Petersen*

30942212.1